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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 JAMES DAVID GRIEPSMA,

8 Plaintiff,

9 v.

10 CHRISTIAN J. ANDERSEN, et al.,

Defendants.

Case No. 2:21-cv-00302-RJB-TLF

ORDER

11 This matter comes before the Court on plaintiffs' motions for appointment of
12 counsel (Dkt. 8) and to demand trial by jury (Dkt. 9).

13 **A. Motion to Demand Jury Trial (Dkt. 9)**

14 Plaintiff has filed a "motion to demand jury trial." Dkt. 9. Plaintiff's motion is
15 unnecessary, as his complaint already contains a jury demand. Dkt. 1 at 1. Plaintiff's
16 motion (Dkt. 9) is therefore DENIED as moot.

17 **B. Motion for Appointment of Counsel (Dkt. 8)**

18 Plaintiff seeks appointment of counsel. Dkt. 8. Plaintiff argues that he is indigent,
19 has been unable to retain counsel, that his ability to investigate and research his case is
20 restricted by his confinement in segregation, that the case involves issues regarding
21 deliberate indifference and intent requiring research and investigation, and that counsel
22 would be better equipped to examine witnesses at trial. *Id.* at 2.

1 In civil cases, the appointment of counsel to a pro se litigant “is a privilege and
2 not a right.” *United States ex. Rel. Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir.
3 1965) (citation omitted). A plaintiff has no constitutional right to appointed counsel in a §
4 1983 action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981) (“[a]ppointment
5 of counsel under this section is discretionary, not mandatory.”). In “exceptional
6 circumstances,” the Court may appoint counsel for indigent civil litigants pursuant to 28
7 U.S.C. § 1915(e)(1)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled*
8 *on other grounds*, 154 F.3d 952 (9th Cir. 1998).

9 The Court must evaluate both “the likelihood of success on the merits [and] the
10 ability of the petitioner to articulate his claims *pro se* in light of the complexity of the
11 legal issues involved,” to make an assessment whether exceptional circumstances
12 show that counsel should be appointed. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331
13 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff
14 must plead facts that show he has an insufficient grasp of his case or the legal issue(s)
15 involved, as well as an inadequate ability to articulate the factual basis of his claim.
16 *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).
17 Although a *pro se* litigant may be better served with the assistance of counsel, that is
18 not the test. *Rand*, 113 F.3d at 1525.

19 Plaintiff has not identified conditions that render this case extraordinary. The
20 issues he identifies are faced by any incarcerated litigant. Furthermore, plaintiff has
21 demonstrated that he has a sufficient grasp of the legal issues involved in this case and
22 has been able to adequately articulate the factual basis of his claim. Indeed, his
23 complaint was sufficiently presented to pass this Court’s screening and to be served
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1 upon defendants. Dkt. 6. In addition, at this early stage of the litigation, the Court cannot
2 determine whether plaintiff is likely to prevail on the merits.

3 This case does not, at this time, present extraordinary circumstances supporting
4 the appointment of counsel. See *Wilborn*, 789 F.2d at 1331 (“Most actions require
5 development of further facts during litigation and a pro se litigant will seldom be in a
6 position to investigate easily the facts necessary to support the case. If all that was
7 required to establish successfully the complexity of the relevant issues was a
8 demonstration of the need for development of further facts, practically all cases would
9 involve complex legal issues [warranting appointment of counsel].”). The Court therefore
10 DENIES plaintiff’s motion for appointment of counsel without prejudice.

11 **C. Appointment of Expert Witnesses**

12 Plaintiff’s motion also requests the appointment of expert witnesses to act on
13 plaintiff’s behalf. Dkt. 8 at 2.

14 The *in forma pauperis* statute, 28 U.S.C. § 1915, does not provide for the
15 payment of fees and expenses for witnesses, see *Dixon v. Ylst*, 990 F.2d 478, 480 (9th
16 Cir. 1993), or for the waiver of such fees and expenses. See *Hadsell v. Comm’r Internal*
17 *Revenue Serv.*, 107 F.3d 750, 752 (9th Cir. 1997). Federal Rule of Evidence 706 allows
18 the court to appoint a *neutral* expert. *Students of Cal. Sch. For the Blind v. Honig*, 736
19 F.2d 538, 549 (9th Cir. 1984), *vacated on other grounds*, 471 U.S. 148 (1985).
20 However, “[r]easonably construed, [Rule 706] does not contemplate the appointment of,
21 and compensation for, an expert to aid one of the parties.” *Walker v. Woodford*, 2008
22 WL 793413 at *1 (S.D. Cal., March 24, 2008) (citation omitted).

23 Here, plaintiff is not seeking the appointment of neutral experts, but instead is
24 seeking expert testimony solely for the benefit of proving his case. Dkt. 8 at 2. This is
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1 not the function of a neutral expert witness and appointment for such a purpose would
2 be inappropriate. See *Spinks v. Lopez*, 2014 WL 411283, at *2 (E.D. Cal. Feb. 3, 2014),
3 *subsequently aff'd*, 623 F. App'x 499 (9th Cir. 2015) ("The appointment of an expert
4 witness under Rule 706 is intended to benefit the trier of fact, not a particular litigant[.]").
5 Plaintiff's motion to appoint expert witnesses (Dkt. 8) is DENIED.

6 Dated this 3rd day of May, 2021.

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Theresa L. Fricke
10 United States Magistrate Judge
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